

REMARKS

Claims 15 – 17, 20, 24, 26, 40 – 44, 47 – 52, and 54 – 68 are currently pending with Claims 15 and 47 and Claim 65 being the pending independent claims. In the Office Action, the Examiner rejected all pending claims under Section 112, first paragraph as allegedly failing to comply with the enablement requirement. In addition, the Examiner rejected Claim 65 – 68 as allegedly being obvious over US Patent Application Publication US 2003/ 0068485 (“Ramsey”) in view of US Patent No. 5,346,599 (“Tiernan”), US Patent No. 6,370,812 to (“Burns”), and US Patent No. 6,423,251 (“Blount”).

Aside from the enablement rejections, there are no prior art or other rejections of Claims 15 – 17, 20, 24, 26, 40 – 44, 47 – 52, or 54 – 64. Therefore, it is the Applicants’ understanding that the Examiner considers the subject matter of these claims to patentably define over the prior art.

Each of the foregoing rejections is respectfully traversed and favorable reconsideration is requested in view of the above amendments and following remarks.

I. The Enablement Rejections.

Turning first to the Section 112 issue, the Examiner contends that the claims fail to comply with the enablement requirement of Section 112. The Examiner’s contention derives from the language in the preamble of the independent Claims (15, 47, and 65) reciting a method for “preventing” termite damage. The Examiner suggests that the preamble recite a method for “reducing” termite damage instead.

As the Applicants have noted before, the term “preventing”, as understood by those of ordinary skill in the art, does not require a 100 % elimination of all termite damage. To resolve this issue, however, the Applicants have amended the independent claims to specify a method for “reducing” termite damage, rather than “preventing” termite damage.

In view of these amendments, it is submitted that any enablement difficulties in the claims are overcome, and that the Section 112 rejections should now be withdrawn.

II. The Prior Art Rejections.

Turning to the prior art, the Examiner contends that Claims 65 – 68 are obvious over Ramsey in view of Tiernan, Burns and Blount. The Examiner further suggests that the glycols in Claim 65 should be limited, presumably in the same manner as Claims 15 and 47.

In response, the Applicants have further amended Claim 65 to specify that the glycol is selected from the group consisting of propylene glycol, monoethylene glycol, diethylene glycol, triethylene glycol, polyethylene glycol, and mixtures thereof. While the Applicants have made this amendment in the current application, this amendment is made solely for the purpose of expediting prosecution of the current case to an allowance. The Applicants wish to emphasize that the patentability of Claim 65, and its dependent claims, does not stand or fall solely upon this limitation. Indeed, the Applicants expressly reserve their right to further prosecute broader claims in one or more continuation applications.

In particular, the Applicants point out Claim 65 specifies that the building component being treated is not merely “cementitious”, but “concrete.” The Examiner contends that the polystyrene foam boards disclosed in Ramsey are a “cementitious building component.” As the Applicants have stressed before, however, a person of ordinary skill in the art would not consider a polystyrene material to be “cementitious.” Moreover, Ramsey’s polystyrene foam boards certainly do not disclose or suggest a concrete building component or the coating of a concrete building material with a solution comprising water, glycol, and disodium octaborate tetrahydrate. Thus, the cited references fail to render the subject matter of new Claim 65 obvious for at least this reason, as well.

In light of the foregoing, the present amendment is believed to place the application in a condition for allowance and entry of the foregoing amendments and allowance of all pending claims is respectfully solicited.

Application No. 10/758,987
May 12, 2009

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By: /J. David Gonce/

J. David Gonce
Registration No. 47,601

Date: May 12, 2009
P.O. Box 1871
Knoxville, Tennessee 37901
(865) 546-4305

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